

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
EASTERN PROFIT CORPORATION LIMITED, : Docket #1:18-CV-02185-
 : JGK-DCF
Plaintiff, :
- against - :
STRATEGIC VISION US LLC, : New York, New York
 : December 13, 2019
Defendant. :
 : TELEPHONE CONFERENCE
----- :

PROCEEDINGS BEFORE
THE HONORABLE JUDGE DEBRA C. FREEMAN,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

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Proceedings conducted telephonically and recorded by
electronic sound recording;
Transcript produced by transcription service

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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HONORABLE DEBRA C. FREEMAN (THE COURT): Hi, it's Judge Freeman. Sorry to keep you holding.

MR. EDWARD GREIM: That's all right, Judge Freeman. Good morning.

THE COURT: Good morning. Who do I have on?

MR. GREIM: For the -- well, I guess the movant here and Strategic Vision, the defendant-counterclaim plaintiff, you've got Eddie Greim and Jennifer Donnelly. And then we've got two other parties and three other lawyers. And I'll let them introduce themselves. Maybe we would start with the new people, with --

THE COURT: Well, hold on. Do I have plaintiff's counsel on the phone?

MR. CHRISTOPHER CHUFF: Yes, your Honor. This is Chris Chuff and Joanna Cline from Pepper Hamilton for plaintiff, Eastern Profit.

THE COURT: Okay, and then non-parties, do I have a single non-party represented on this call? Just Mr. Bannon?

MS. ALLISON MCGUIRE: Yes, your Honor. Good morning. This is Allison McGuire and Alex Spiro from Quinn Emanuel on behalf of Stephen Bannon.

THE COURT: I'm sorry, Ms. McGuire and --?

MS. MCGUIRE: Mr. Spiro, Alex Spiro.

THE COURT: Okay. Is that everybody, is there

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more?

MR. GREIM: That's everybody, your Honor.

THE COURT: All right. So I have fairly lengthy submissions, but I see my role here at the moment as rather narrow. As I understand, the subpoena was served in D.C.; and if it's complied with, compliance would be in D.C., which means a motion to quash it or a motion for contempt would be made in D.C., and only if something were transferred to me would that be back in front of me under Rule 45.

But right now I have control over discovery deadlines. And as I understand it, what Mr. Greim is looking for is for me to bless either an extension or a reopening of the discovery period, depending how you look at it, to allow for this deposition to go forward even without opining as to whether the subpoena should be quashed or the witness should be held in contempt for noncompliance. Is that right, Mr. Greim?

MR. GREIM: That's right, your Honor. We're asking for a spot reopening -- maybe that's the best way to say it -- a spot reopening for a what will probably be a half-day deposition of Mr. Bannon.

THE COURT: All right, I will note that discovery has closed. But I will also note, in fairness, that this application was made prior to the close of discovery. And if

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it has been ruled on immediately, it would have been for an extension of discovery, not a reopening. So in fairness to Strategic Vision, I think that the appropriate standard for looking at this would be a standard for an extension of discovery and not to reopen discovery, although I'm not sure how much difference it makes with respect to my analysis.

I'll note for counsel for Mr. Bannon, since you haven't been on calls with me before, that I do have recording equipment available for phone calls to chambers so that it's possible to have a record of these conferences. I do have this recording equipment on. It is not always perfect; sometimes it does not work, but there's always hope that it does. And if anyone wants to obtain a transcript, you can do that by following the instructions that are available at the Court's website. They just recently changed the website, and I believe the way to go about finding the information on how to order it is if you go to the top of the website on the right, there are some lines that indicate there's a dropdown menu. You click on that, and you go to Trial Support. And from Trial Support you go to Courtroom Technology. And once you get to Courtroom Technology, you scroll down looking for something about electronic court recordings or ECR. It's the same electronic recordings we have in the courtrooms that are outfitted with it, and so it's the exact same procedure for

ordering a transcript even if it's a phone call with chambers.

In any event, that said, the factors that would influence me, as I outlined to Mr. Greim previously, relate to whether there were diligent efforts made to obtain this testimony during the discovery period or whether there was a lack of diligence and last-minute efforts. I told Mr. Greim that what he had put before me before was not persuasive as to the diligence of the efforts that were made but that my denial of the request for, let's just call it a carve-out of this discovery period to allow for this one deposition, that that denial of you without prejudice to renew upon a better showing of due diligence that was made and that Strategic Vision was essentially thwarted in its ability to obtain this testimony within the discovery period and on a reasonable amount of notice.

I've now gotten a submission from Mr. Greim which lays out attempts to serve a subpoena dating all the way back to, I think, September and recitations of all the different efforts that were made with process servers and a private investigator and different places where service was attempted and repeated times when service was attempted and so on. And I must say that is fairly persuasive that reasonable diligence was undertaken to get a subpoena served and to get this discovery within the discovery period. I also had told

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2 Mr. Greim that, if he were going to renew this application, he
3 should let Mr. Bannon's counsel know about it so I could hear
4 from counsel for the non-party if he wanted to be heard on
5 this question of whether there was reasonable diligence and
6 whether there was any thwarting of the efforts or whether it
7 all seemed to be very last minute to you. But I'm not sure,
8 you know, how much you can say to refute the recitation by
9 Mr. Greim of the efforts that were made, whether they ended up
10 being productive or not. At least it doesn't seem to me that
11 he and his, you know, team of process servers and so on were
12 sitting on their hands for a long period of time and suddenly
13 trying to do this in fewer than ten days before the close of
14 the discovery period. Would anyone like to address that?

15 MS. McGUIRE: Yes, your Honor. This -- yes, your
16 Honor, thank you. This is Allison McGuire for Mr. Bannon. I
17 think as an initial matter if we could take a step back and
18 look at the facts that discovery in this case began in August
19 of 2018, and Strategic Vision didn't even begin contemplating
20 serving Mr. Bannon until the final two months of that
21 discovery window. And as Strategic Vision knows, Mr. Bannon
22 is a well-known public figure with extensive professional
23 commitments around the world, and there are very foreseeable
24 challenges to serving a subpoena to a public figure. And in
25 fact, I think an important point that --

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2 THE COURT: Well, let me just interrupt here a
3 second. It's my understanding that the subpoena, to the
4 extent it has relevance, is relevant to a counterclaim. When
5 was that counterclaim asserted?

6 MS. MCGUIRE: Yes, your Honor. That counterclaim
7 was first filed in July of 2019. Yet, Strategic Vision
8 waited an additional two months, until September 25, to serve
9 the subpoena to Mr. Bannon.

10 THE COURT: Okay, so the counterclaim that made
11 this arguably relevant was filed in July and the subpoena was
12 served in September. And the close of discovery at that point
13 was when?

14 MS. MCGUIRE: My understanding is that it was
15 November 29, your Honor.

16 THE COURT: Well, you know, that's not -- you know,
17 on its face, that's not unreasonable. I mean, it's not like
18 serving a subpoena at the 11th hour. It sounds like, like I
19 said, a number of efforts were made to try to track Mr. Bannon
20 down. And, you know, just because someone is a public figure
21 doesn't mean that, you know, trying to serve a subpoena for
22 two months is in and of itself unreasonable.

23 MS. MCGUIRE: Your Honor, I think there's an
24 important factor that we need to point out here and that's
25 outside of the attempts that Strategic Vision identified were

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2 certain subpoenas dated for -- with a notice date of
3 October 10, and they tried to serve that subpoena five times
4 after the notice date. So I understand how Strategic Vision
5 has purportedly identified 11 times that they attempted to
6 serve Mr. Bannon in a two-month period; but five of those
7 times, it wasn't a facially valid subpoena. And it waited
8 another four weeks after the October 10 subpoena to even issue
9 another subpoena to Mr. Bannon (indiscernible). And I think
10 that this demonstrates not only in less than two months that
11 it waited before it attempted to subpoena Mr. Bannon the first
12 time, but now an additional four weeks' delay between issuing
13 a second subpoena. So this isn't diligence; it's delay.

14 THE COURT: Is it true that counsel for Mr. Bannon
15 at one point seemed to suggest that maybe counsel would work
16 with Mr. Greim for responding by a December 5 date?

17 MS. MCGUIRE: Yes, your Honor. I had conversations
18 with Mr. Greim on, I believe it was, November 18 and the 21st,
19 when we discussed his theories of relevance about Mr. Bannon;
20 and again, I explained that Mr. Spiro and I and Mr. Bannon all
21 had busy schedules and that we didn't receive reasonable
22 notice of this subpoena, the subpoena served on November 14,
23 to proceed with a November 22 deposition. And we had -- I
24 requested and Mr. Greim agreed to a two-week extension of that
25 notice date in order to give us the time to respond to the

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subpoena.

THE COURT: Well, so what happened to that position that, you know, if it were December 5, then maybe you could work something out?

MS. McGUIRE: Well, your Honor, I think now that we've had time to explore Mr. Greim's theories of relevance, we see no colorable clean-up elements here; and to drag Mr. Bannon, who is not a party to the contract and is not alleged (indiscernible) in any underlying contract negotiations, into this dispute at this point in time seems beyond unreasonable. And I think that were the Court to grant Mr. Greim's extension to the discovery schedule, we would apply to quash in the compliance court in D.C.

THE COURT: Well, again, I'm not going to get into issues of -- that might be raised on a motion to quash because that motion to quash would not -- first of all, it hasn't been made; and second of it all, it wouldn't be made in front of me. And it seems to me that those issues are appropriately directed to the court where compliance is required under the rules, although I recognize that that court might end up kicking it back to me, at which time I would take those issues up.

I really am looking at my role right now as a narrow one, which is were sufficiently diligent efforts made to

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justify allowing some more time on the clock for this deposition, assuming, you know, that a motion to quash doesn't have legs or a motion -- you know, other motions relating to the subpoena don't result in some kind of protective order. But I think that it's hard for me to say that starting to make efforts a couple of months before a deadline, you know, is something that is insufficient.

Mr. Greim, what's your response about not changing the return date on the subpoena even while continuing to attempt to serve it?

MR. GREIM: Your Honor, we actually had an October 11 subpoena. So -- and I'm sorry, our initial submission identified September 25 and November 7, but we had an October 11 subpoena. So after the October 4 attempted service failed, we issued another one on October 11 and tried to serve that one on the 13th, 14th,, 19th and 25th.

THE COURT: And what would the return date have been on that one?

MR. GREIM: That one would have been November 1.

MS. MCGUIRE: Your Honor, we (indiscernible).

MR. GREIM: Yes, and I -- your Honor, I'm sorry, that should have been attached to our initial -- should have been attached to our initial showing. And as I was preparing this morning, looking at the response I saw that it wasn't.

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And we just forgot to include that as an attachment; we should have.

THE COURT: Well, provide it to counsel for Mr. Bannon right away, please.

MR. GREIM: Absolutely.

THE COURT: For that matter, why don't you just file something with the court that says this was inadvertently omitted and add it so that we have a full record here on the docket of relevant information. And we do both, you know, file it with the court and provide a copy to counsel.

So here's what I'm going to do. In recognition that the application to extend the discovery period was made before the close of discovery and based on the rather lengthy recitation of all of the efforts that were made to serve Mr. Bannon pretty well before the close of discovery -- and I'll also note, by the way, that even though he is a public figure, he's not currently a member of the administration, he is a private citizen, as far as I know. So he may have speaking engagements and do other things and travel a lot, but so do lots of other people. A lot of people have busy jobs; it doesn't mean that two months is on its face an unreasonable period of time to try to obtain somebody -- obtain service on someone.

So I'm going to allow a carve-out of this discovery

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2 period for this one deposition, without making any rulings
3 that would be relevant to a motion to quash. So you can't go
4 to D.C. and say by extending this discovery deadline Judge
5 Freeman found, even implicitly, that this was an appropriate
6 subpoena -- okay? -- nor can you say she found it was
7 inappropriate; I'm not reaching those issues. I'm only
8 looking at the discovery timeframe and whether efforts were
9 made to obtain this discovery within the discovery period.
10 And I'm finding that sufficient efforts were made.

11 Now, in terms of a carve-out period of time, I would
12 want this deposition to happen relatively soon, with
13 appropriate, you know, consultation with counsel for the
14 witness so that it's at a reasonably convenient time. But I
15 don't want it to stretch out forever. I understand there may
16 be motion practice in D.C. Together with motion practice in
17 D.C., I assume you could, you know, you could ask for a stay
18 while it's being resolved -- I get that. But I still don't
19 want to have this floating indefinitely.

20 So to allow time for motion practice in D.C. and to
21 allow time for his busy schedule and given the holidays, which
22 are now upon us, whereas ordinarily I would say a couple of
23 weeks, I will stretch it out longer than that. Let's see,
24 today is the -- today is what? -- oh, today is Friday the
25 13th, look at that. Two weeks would take you right between

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Christmas and New Year's. I'll stretch it out to January 10 as the deadline for making this deposition happen, which I understand from Mr. Greim would likely be half a day. If you can find a half a day in there to put on the calendar and hold, even while you are litigating this in D.C., I think that would be a good plan because I'm sure in this litigation plaintiff -- and perhaps defendant, as well -- wants to get a move on with the next phase of the case.

I'm not sure, for that matter, the next phase of the case need be put on hold because of this. Are summary judgment motions anticipated, or are we going to expert discovery? Are we going to expert discovery, or is that done, or are there no experts?

MR. GREIM: No, neither side has designated an expert; we just have translators.

THE COURT: Well, I would suggest that summary judgment need not necessarily await this one deposition, one half-day deposition, and that -- I mean, you can take it up with the district judge if you think otherwise. But it would seem to me you could always do a short supplement to a brief on one side or the other if you get some testimony that you think adds to a point. But I would think for summary judgment it's probably not going to be critical, and perhaps you shouldn't be holding up the works. Does anybody --

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MR. GREIM: Excuse me, your Honor. We --

THE COURT: -- anybody disagree with that?

MR. GREIM: No. But there are a couple of data points that might -- I don't think they'd change anything, but just so you know -- and, first of all, we would intend to use this in our summary judgment motion and response -- because I think we'll probably have cross-motions. But we have a pre-motion conference with Judge Koeltl on January 14. And then we are going to be -- the current deadline for filing the motions is January 10, and so we are going to be filing -- this is Eastern Profit and Strategic Vision --

THE COURT: I'm sorry, say that again? You're going to be before Judge Koeltl before the motion deadline?

MR. GREIM: Well, no, it'll be after. So just to make this clear, currently the current deadline is January 10; however, that falls before the current -- but Judge Koeltl wants you to come in for a pre-motion conference. So we're coming in for that conference on the 14th, which is actually four days after the deadline. So they're going to be asking Judge Koeltl, Eastern Profit and Strategic Vision jointly -- and I bet Chris Chuff, we may get that on file even today -- to move back the deadline to January -- the last Friday in January just so that the deadline actually falls after the conference, which is -- it's done in the ordinary

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course.

THE COURT: I see. Well, what I'm going to do is I'm going to let -- well, if -- by the way, if your deadline is moved, you'll have this deposition before your deadline, assuming it happens by January 10. But I will let Judge Koeltl know that discovery is done and the parties are ready for summary judgment with the exception of this one deposition, which is still a little bit in the air, where I've blessed the carve-out but where there's likely to be motion practice and likely to still be some further delay. And then it was my view that summary judgment motions could go forward without it; but if he has a pre-motion conference, the parties might have something they want to say about that and he can look at that separately. So I'll clue him in, and I'll tell him that you may be making an application to move the conference date and just fill him in on what's going on. And then you make whatever application you make.

MR. CHUFF: Your Honor, with the conference date, we are good with that; it will be the deadline for filing the motion, just to move it to after the conference date.

THE COURT: Right. I understand. I understand.

MR. GREIM: Okay.

THE COURT: Okay, so you'll be asking to keep the conference and move the motion date. I'll let him know that

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that's a likely application.

And my ruling on this record is purely from a discovery-deadline point of view, you can have until January 10 to take this half-day deposition. And then you fight it out on a motion to quash elsewhere. If it comes back to me and if the deadlines get affected by coming back to me or by the length of time it takes to resolve in D.C., if it does, we'll worry about that then. But for now I'm going to urge counsel to speak in good faith and try to pin down a date and have it on the calendar maybe closer to the January 10 date to give you time to try to work out your differences.

I would also urge you strongly to try to avoid the motion practice in D.C. and see if you can, you know, agree on some parameters for this deposition. Parties in this case -- I know we now have a non-party -- but have been able at times to discuss parameters for things and work out, you know, reasonable limitations and get things focused. It's a case that has some sort of odd parameters to it; it's not purely a contract case. So I'd urge you to try -- like I said, try to conserve resources and avoid unnecessary motion practice, if you possibly can.

MR. GREIM: Thanks, your Honor.

THE COURT: Anything else from anybody? No?

Anything else for Mr. Bannon? No?

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MS. McGUIRE: Nothing for Mr. Bannon.

THE COURT: All right. Thank you, all. Take care,
everybody.

MR. CHUFF: Thank you.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Eastern Profit Corporation Limited v. Strategic Vision US LLC, Docket #18-cv-02185-JGK-DCF, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Carole Ludwig
Signature _____

Carole Ludwig

Date: December 17, 2019